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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,804	12/27/2000	Rodney J. Barry	9D-DW-19349-Barry et al	3540

7590 04/13/2004  
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EXAMINER

MOY, JOSEPH MAN

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/748,804

Applicant(s)

BARRY ET AL.

Examiner

Joseph Moy

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2003 and 22 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Serial Number: 09/748804  
Art Unit: 3727

In view of the newly cited references the final rejection dated 01/14/03 has been Withdrawn. The prosecution is hereby reopened.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5,6,7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zabriskie in view of Perkins et al. Zabriskie shows all the structures of the device as recited by the claims except the selectively positionable handle. Perkins et al shows an inverted U-shaped handle being selectively movable at any desired position to enhance the handling process. It would have been obvious to substitute for the fixed handle of Zabriskie, an improved movable handle and bracket as taught by Perkins et al in order to enhance the handling process of placing and taking the silverware from the basket.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zabriskie in view of Perkins et al and Crawford. Crawford shows a handle with contoured finger grips. It would have been obvious to provide the modified handle of Zabriskie with contoured finger grip configuration in order to enhance the comfort of the fingers that carry the basket as shown by Crawford.

Claim 9 is rejected under 35 U.S.C.103(a) as being unpatentable over Zabriskie in view of Perkins et al and Allison. Allison shows a handle with channel-shaped cross

section to enhance the strength of the handle. It would have been obvious to provide the modified handle of Zabriskie with strengthening channel-shaped cross section as shown by Allison in order to provide more strength to the handle.

Claims 10,12, 17 and 18 are rejected under 35 U.S.C.103(a) as being unpatentable over Maslow in view of Zabriskie and Perkins et al. Maslow shows a compartmented dishwasher silverware basket with opposite long and short rectangular sidewalls. Zabriskie shows a silverware basket with a handle. Perkins et al shows a moveable handle for any desired position. It would have been obvious to provide the basket of Maslow with a handle as taught by Zabriskie in order to enhance the handling of the basket. Moreover to provide the basket of Maslow with a specific type of handle and bracket as taught by Perkins et al to enhance the process of placing and taking silverware from the basket would also have been obvious.

Claims 11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maslow in view of Zabriskie, Perkins et al and Allison. Allison shows a gripper portion with U-shaped cross section. It would have been obvious to provide the handle with U-shaped cross section in order to provide more strength to the gripper section.

Any inquiry concerning this office action will be directed to Examiner Joseph Moy, (703) 308-1145.



Joseph Man-Fu Moy  
Primary Examiner

Date: 04/04/2004